

CENTER FOR DISABILITY ACCESS
Amanda Seabock, Esq., SBN 289900
Chris Carson, Esq., SBN 280048
Dennis Price, Esq., SBN 279082
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

Iris V. Brown, in individual and
representative capacity as trustee of
the Iris V. Brown Family Trust dated
August 26, 1994;
Tire Time Inc., a California
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Iris V. Brown, in individual and representative capacity as trustee of the Iris V. Brown Family Trust dated August 26, 1994; Tire Time Inc., a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

1 2. Defendant Iris V. Brown, in individual and representative capacity as
2 trustee of the Iris V. Brown Family Trust dated August 26, 1994, owned the
3 real property located at or about 2739 Story Rd., San Jose, California, between
4 January 2019 and April 2019.

5 3. Defendant Iris V. Brown, in individual and representative capacity as
6 trustee of the Iris V. Brown Family Trust dated August 26, 1994, owns the real
7 property located at or about 2739 Story Rd., San Jose, California, currently.

8 4. Defendant Tire Time Inc. owned Tire Time located at or about 2739
9 Story Rd., San Jose, California, between January 2019 and April 2019.

10 5. Defendant Tire Time Inc. owns Tire Time located at or about 2739
11 Story Rd., San Jose, California, currently.

12 6. Plaintiff does not know the true names of Defendants, their business
13 capacities, their ownership connection to the property and business, or their
14 relative responsibilities in causing the access violations herein complained of,
15 and alleges a joint venture and common enterprise by all such Defendants.
16 Plaintiff is informed and believes that each of the Defendants herein,
17 including Does 1 through 10, inclusive, is responsible in some capacity for the
18 events herein alleged, or is a necessary party for obtaining appropriate relief.
19 Plaintiff will seek leave to amend when the true names, capacities,
20 connections, and responsibilities of the Defendants and Does 1 through 10,
21 inclusive, are ascertained.

22
23 **JURISDICTION & VENUE:**

24 7. The Court has subject matter jurisdiction over the action pursuant to 28
25 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
26 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

27 8. Pursuant to supplemental jurisdiction, an attendant and related cause
28 of action, arising from the same nucleus of operative facts and arising out of

1 the same transactions, is also brought under California's Unruh Civil Rights
2 Act, which act expressly incorporates the Americans with Disabilities Act.

3 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
4 founded on the fact that the real property which is the subject of this action is
5 located in this district and that Plaintiff's cause of action arose in this district.

6
7 **FACTUAL ALLEGATIONS:**

8 10. Plaintiff went to Tire Time in January 2019 (twice), February 2019,
9 March 2019 and April 2019 with the intention to avail himself of its goods and
10 services, motivated in part to determine if the defendants comply with the
11 disability access laws.

12 11. Tire Time is a facility open to the public, a place of public
13 accommodation, and a business establishment.

14 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
15 to provide accessible parking.

16 13. On information and belief the defendants currently fail to provide
17 accessible parking.

18 14. Additionally, on the dates of the plaintiff's visits, the defendants failed
19 to provide accessible sales counters.

20 15. On information and belief the defendants currently fail to provide
21 accessible sales counters.

22 16. Moreover, on the dates of the plaintiff's visits, the defendants failed to
23 provide accessible door hardware.

24 17. On information and belief the defendants currently fail to provide
25 accessible door hardware.

26 18. Finally, on one of the dates of the plaintiff's visits, the defendants failed
27 to provide accessible paths of travel leading to the restroom.

28 19. Plaintiff personally encountered these barriers.

1 20. By failing to provide accessible facilities, the defendants denied the
2 plaintiff full and equal access.

3 21. The lack of accessible facilities created difficulty and discomfort for the
4 Plaintiff.

5 22. Even though the plaintiff did not confront the barrier, on information
6 and belief the defendants currently fail to provide accessible restrooms.

7 23. The defendants have failed to maintain in working and useable
8 conditions those features required to provide ready access to persons with
9 disabilities.

10 24. The barriers identified above are easily removed without much
11 difficulty or expense. They are the types of barriers identified by the
12 Department of Justice as presumably readily achievable to remove and, in fact,
13 these barriers are readily achievable to remove. Moreover, there are numerous
14 alternative accommodations that could be made to provide a greater level of
15 access if complete removal were not achievable.

16 25. Plaintiff will return to Tire Time to avail himself of its items and to
17 determine compliance with the disability access laws once it is represented to
18 him that Tire Time and its facilities are accessible. Plaintiff is currently
19 deterred from doing so because of his knowledge of the existing barriers and
20 his uncertainty about the existence of yet other barriers on the site. If the
21 barriers are not removed, the plaintiff will face unlawful and discriminatory
22 barriers again.

23 26. Given the obvious and blatant nature of the barriers and violations
24 alleged herein, the plaintiff alleges, on information and belief, that there are
25 other violations and barriers on the site that relate to his disability. Plaintiff will
26 amend the complaint, to provide proper notice regarding the scope of this
27 lawsuit, once he conducts a site inspection. However, please be on notice that
28 the plaintiff seeks to have all barriers related to his disability remedied. See

Doran v. 7-11, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site, he can sue to have all barriers that relate to his disability removed regardless of whether he personally encountered them).

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

27. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

28. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the

1 maximum extent feasible, the path of travel to the altered area and
2 the bathrooms, telephones, and drinking fountains serving the
3 altered area, are readily accessible to and usable by individuals
4 with disabilities. 42 U.S.C. § 12183(a)(2).

5 29. When a business provides parking for its customers, it must provide
6 accessible parking.

7 30. Here, accessible parking has not been provided.

8 31. When a business provides facilities such as sales or transaction counters,
9 it must provide accessible sales or transaction counters.

10 32. Here, accessible sales or transaction counters have not been provided.

11 33. When a business provides door hardware, it must provide accessible
12 door hardware.

13 34. Here, accessible door hardware has not been provided.

14 35. When a business provides paths of travel, it must provide accessible
15 paths of travel.

16 36. Here, accessible paths of travel were not provided during one of
17 plaintiff's visits.

18 37. When a business provides facilities such as restrooms, it must provide
19 accessible restrooms.

20 38. Here, accessible restrooms have not been provided.

21 39. The Safe Harbor provisions of the 2010 Standards are not applicable
22 here because the conditions challenged in this lawsuit do not comply with the
23 1991 Standards.

24 40. A public accommodation must maintain in operable working condition
25 those features of its facilities and equipment that are required to be readily
26 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

27 41. Here, the failure to ensure that the accessible facilities were available
28 and ready to be used by the plaintiff is a violation of the law.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
3 Code § 51-53.)

4 42. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
7 that persons with disabilities are entitled to full and equal accommodations,
8 advantages, facilities, privileges, or services in all business establishment of
9 every kind whatsoever within the jurisdiction of the State of California. Cal.
10 Civ. Code § 51(b).

11 43. The Unruh Act provides that a violation of the ADA is a violation of the
12 Unruh Act. Cal. Civ. Code, § 51(f).

13 44. Defendants’ acts and omissions, as herein alleged, have violated the
14 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
15 rights to full and equal use of the accommodations, advantages, facilities,
16 privileges, or services offered.

17 45. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
18 discomfort or embarrassment for the plaintiff, the defendants are also each
19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
20 (c).)

21 46. Although the plaintiff was markedly frustrated by facing discriminatory
22 barriers, even manifesting itself with minor and fleeting physical symptoms,
23 the plaintiff does not value this very modest physical personal injury greater
24 than the amount of the statutory damages.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: September 21, 2019 CENTER FOR DISABILITY ACCESS

By:



Amanda Seabock, Esq.
Attorney for plaintiff